

MINUTES

REGULAR MEETING – CITY COUNCIL – MAY 2, 2006 - CITY OF NEWTON

The Mayor and City Council held a regular meeting at 7:00 p.m. on Tuesday, May 2, 2006 in the Council Chambers at City Hall with the following present: Mayor Robert Mullinax, Council Members Wayne Dellinger, Tom Rowe, Anne Stedman, Al Gaither, Tom Dixon, Mayor Pro Tem Roy Johnson, City Attorney Larry Pitts, City Manager Ed Burchins, Assistant City Manager Glenn J. Pattishall, Gary Herman, Public Information Director, and Beunice “Bootsie” Roberts, City Clerk.

Item 1 **Call to Order:**

Mayor Mullinax called the meeting to order and welcomed citizens in the audience.

Item 2 **Opening – Council Member Al Gaither**

Council Member Al Gaither gave the invocation and led the Pledge of Allegiance.

Item 3 **Approval of minutes from the April 19, 2006 Special Session on the Proposed Personnel Policy and Discussion on Legislative Issues and the minutes of the April 19, 2006 regular City Council meeting.**

A motion was made by Mayor Pro Tem Johnson, seconded by Council Member Gaither, and unanimously adopted to approve the minutes of the April 19, 2006 Special Session on the Proposed Personnel Policy and Discussion on Legislative Issues and the minutes of the April 19, 2006 regular meeting **with the omission of “Item 6 – Old Business: Non-Agenda Item – Proposed Personnel Policy which needed further clarification of the Group Hospitalization Insurance after July 1, 2006.”**

Item 4 **Consideration of Approval of Consent Agenda Item:**

A motion was made by Council Member Stedman, seconded by Council Member Rowe, and unanimously adopted that the following items on the Consent Agenda be approved.

- A. Consideration of Budget Ordinance to amend Ordinance No. #2005-23 dated August 9, 2005 for Technology Needs in the amount of \$125,000

ORDINANCE # 2006-11 ATTACHED

- B. Consideration of Budget Ordinance to amend Ordinance No. #2005-33 dated November 16, 2005 for Jacob’s Fork Park in the amount of \$215,700

ORDINANCE # 2006-12 ATTACHED

- C. Consideration of Proclamation designating the month of May as “Relay for Life Month”.
D. Consideration of Proclamation designating the week of April 30 through May 6, 2006 as “Municipal Clerks Week.”
E. Consideration of Proclamation designating May 15th as Peace Officer’s Memorial Day and the Week of May 14-20, 2006 as National Police Week

Mayor Mullinax expressed his support of the Relay for Life activity and encouraged others to do so as well as thanked the City Clerk and Police Department for their work and service to the citizens of Newton.

Item 5 **Comments from the public: (Persons wanting to make a public comment on non-agenda items are requested to sign in with the City Clerk prior to the meeting.)**

No one appeared to speak.

Item 6 **Old Business:**

- A. Public Hearing – Relating to borrowing \$4,000,000 reaffirming award financing bid and to approve the resolution

Mayor Mullinax stated that there was a minor technicality in publishing the notice for the public hearing which was held on April 4, 2006 and the Council needed to hold another public hearing to reaffirm the award of the financing bid and approve a resolution.

City Attorney Pitts stated that the resolution should remain the same as was done on April 4, 2006 with the exception of the numbering of the resolutions and the date.

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The Mayor announced that this was the hour and day of the public hearing on a proposed installment financing agreement to be entered into by the City of Newton (the "City"), pursuant to Section 160A-20 of the General Statutes of North Carolina, as amended (the "Act") in a principal amount not to exceed \$4,000,000 for the purpose of providing funds, together with any other available funds, to pay the costs of repairing and upgrading the City swimming pool; engineering, design and construction of Eastmont Culvert, Smyre Farm Road water and sewer lines, Jacob Fork Park, and Electric System Improvement; and engineering, design and acquisition and installation of three (3) Standby/Peaking Generators (the "Project"). Such financing would be secured by a security interest in all or a portion of the Project being financed.

The Mayor acknowledged due publication of a notice of public hearing in a newspaper with a general circulation in said City as required by the Act and directed the City Clerk to attach the affidavit showing publication in said paper as Exhibit A hereto.

The Mayor then announced that the City Council would immediately hear anyone who might wish to be heard on the advisability of the proposed Project or financing as so described.

A list of any persons making comments and a summary of such comments are attached as Exhibit B hereto.

The public hearing was closed.

All statements and comments by participants of the public hearing were duly considered by the City Council.

Thereupon, Council Member Tom Dixon introduced the following resolution the title of which was read and copies of which had been distributed to each Council Member:

RESOLUTION #8 – 2006

RESOLUTION ACCEPTING THE PROPOSAL OF BRANCH BANK & TRUST COMPANY IN CONNECTION WITH AN INSTALLMENT FINANCING FOR SWIMMING POOL REPAIRS AND UPGRADE, PARK, WATER AND SEWER EXTENSION, ELECTRICAL SYSTEM IMPROVEMENTS AND VARIOUS EQUIPMENT.

WHEREAS, the City of Newton, North Carolina (the "City") intends to enter into an installment financing agreement pursuant to Section 160A-20 of the General Statutes of North Carolina for the purpose of financing the purpose of providing funds, together with any other available funds, to pay the costs of repairing and upgrading the City swimming pool; engineering, design and construction of Eastmont Culvert, Smyre Farm Road water and sewer lines, Jacob Fork Park, and Electric System Improvement; and engineering, design and acquisition and installation of three (3) Standby/Peaking Generators (the "Project"); and

WHEREAS, the City has solicited proposals from banks to provide the financing for the Project; and

WHEREAS, upon careful review and consideration of the proposals submitted by banks to provide such financing, the City desires to accept the proposal of Branch Bank & Trust Company (the "Bank");

NOW, THEREFORE, BE IT RESOLVED by the City Council (the "City Council") of the City of Newton, North Carolina (the "City") as follows:

Section 1. The proposal of the Bank to provide financing through an installment financing agreement in the principal amount not to exceed of \$4,000,000 for the purpose of providing funds to pay the costs of the Project is hereby accepted, subject to further approval of the particular documentation related thereto by the City Council.

Section 2. The City Manager and the Finance Director of the City are each hereby authorized and directed to execute and deliver such documentation as may be necessary to accept the proposal of the Bank.

Section 3. This resolution shall take effect immediately upon its passage.

Upon motion of Council Member Al Gaither, seconded by Council Member Anne Stedman, the foregoing resolution was adopted by the following vote:

Ayes: Roy Johnson, Tom Dixon, Tom Rowe, Al Gaither, Anne Stedman

Noes: Wayne Dellinger

Thereupon, Council Member Roy Johnson introduced the following resolution the title of which was read and copies of which had been previously distributed to each Council Member:

RESOLUTION # 9 - 2006

RESOLUTION MAKING CERTAIN FINDINGS AND DETERMINATIONS REGARDING THE FINANCING OF SWIMMING POOL REPAIRS AND UPGRADE, PARK, WATER AND SEWER EXTENSION, ELECTRICAL SYSTEM IMPROVEMENTS AND VARIOUS EQUIPMENT PURSUANT TO AN INSTALLMENT FINANCING, REQUESTING THE LOCAL GOVERNMENT COMMISSION TO APPROVE THE FINANCING ARRANGEMENT AND AUTHORIZING THE EXECUTION AND DELIVERY OF A FINANCING AGREEMENT AND RELATED DOCUMENTS IN CONNECTION THEREWITH

BE IT RESOLVED by the City Council (the "City Council") of the City of Newton, North Carolina (the "City") as follows:

Section 1. The City Council does hereby find and determine as follows:

(a) There exists in the City a need to repair and upgrade the City swimming pool; engineering, design and construction of Eastmont Culvert, Smyre Farm Road water and sewer lines, Jacob Fork Park, and Electric System Improvement; and engineering, design and acquisition and installation of three (3) Standby/Peaking Generators (the "Project").

(b) In order to pay the costs of the Project and to pay certain other costs associated with the Project, the City Council has determined to enter into an installment financing agreement (the "Agreement") with Branch Bank & Trust Company (the "Bank"), pursuant to which the Bank will advance the City an amount not to exceed \$4,000,000, which will be sufficient to pay the cost of financing the Project, and the City will repay the advancement in installments, with interest (the "Installment Payments"). In order to secure such payments, the Agreement will provide for a lien on or security interest in all or a portion of the Project being financed.

(c) It is in the best interest of the City to enter into the Agreement in that such plan of finance will result in providing financing for the Project in an efficient and cost effective manner.

(d) Entering into the Agreement is preferable to a general obligation bond and revenue bond issue in that (i) the City does not have sufficient constitutional authority to issue non-voted general obligation bonds pursuant to Article V, Section 4 of the North Carolina Constitution because the City has not retired a sufficient amount of debt in the preceding fiscal year to issue a sufficient amount of general obligation bonds for the Project without an election; (ii) the amount of financing does not justify the use of revenue bonds to finance the Project; (iii) the cost of the Project exceeds the amount to be prudently provided from currently available appropriations and unappropriated fund balances; (iv) the circumstances existing require that funds be available to commence construction of the Project as soon as practicable and the time required for holding an election for the issuance of voted general obligation bonds pursuant to Article V, Section 4 of the North Carolina Constitution and the Local Government Bond Act will delay the commencement of construction of the Project by several months; and (v) there can be no assurances that the issuance of general obligation bonds to finance the Project would be approved by the voters and the necessity of the Project dictates that the Project be financed by a method that assures that the Project will be constructed in an expedient manner.

(e) Based upon information provided to the City Council, the costs of the financing described above is reasonably comparable to the costs associated with other alternative means of financing and is acceptable to the City Council.

(f) Counsel to the City will render an opinion to the effect that the proposed undertaking as described above is authorized by law and is a purpose for which public funds may be expended pursuant to the Constitution and laws of the State of North Carolina.

(g) The debt management policies of the City have been carried out in strict compliance with law, and the City is not in default under any obligation for repayment of borrowed money.

(h) No tax rate increase is anticipated to be necessary to pay the Installment Payments.

(i) There has been presented to the City Council at this meeting a draft of the Agreement.

Section 2. The City Council hereby authorizes, ratifies and approves the filing of an application with the Local Government Commission for approval of the Agreement and requests the Local Government Commission to approve the Agreement and the proposed financing and in connection therewith.

Section 3. In order to provide for the financing of the Project, the City is hereby authorized to enter into the Agreement to receive advancement in installments pursuant thereto in a principal amount not to

exceed \$4,000,000. The City shall repay the advancement in installments due in the amounts and times set forth in the Agreement. The payment of Installment Payments shall be designated as principal and interest as provided in the Agreement.

Section 4. The City Council hereby approves the forms of the Agreement in substantially the form presented at this meeting. The Mayor, City Manager and Finance Director are each hereby authorized to execute and deliver on behalf of the City each of said documents in substantially the forms presented at this meeting, containing such insertions, deletions and filling in of blanks as the person executing such documents shall approve, such execution to be conclusive evidence of approval by the City Council of any such changes. The Clerk or any Assistant or Deputy Clerk is hereby authorized to affix the official seal of the City to each of said documents and to attest the same to the extent required.

Section 5. No deficiency judgment may be rendered against the City in any action for breach of any contractual obligation under the Agreement, and the taxing power of the City is not and may not be pledged directly or indirectly to secure any moneys due under the Agreement.

Section 6. The Mayor of the City Council, the City Manager, the Finance Director and the City Clerk of the City, and any other officers, agents and employees of the City are hereby authorized and directed to deliver such certificates, opinions and other items of evidence as shall be deemed necessary to consummate the transactions described above.

Section 7. This resolution shall take effect immediately upon its passage.

Upon motion of Council Member Anne Stedman, seconded by Council Member Al Gaither, the foregoing resolution entitled

RESOLUTION # 10 – 2006

“RESOLUTION MAKING CERTAIN FINDINGS AND DETERMINATIONS REGARDING THE FINANCING OF SWIMMING POOL REPAIRS AND UPGRADE, PARK, WATER AND SEWER EXTENSION, ELECTRICAL SYSTEM IMPROVEMENTS AND VARIOUS EQUIPMENT PURSUANT TO AN INSTALLMENT FINANCING, REQUESTING THE LOCAL GOVERNMENT COMMISSION TO APPROVE THE FINANCING ARRANGEMENT AND AUTHORIZING THE EXECUTION AND DELIVERY OF A FINANCING AGREEMENT AND RELATED DOCUMENTS IN CONNECTION THEREWITH” was passed by the following vote:

Ayes: Roy Johnson, Tom Dixon, Tom Rowe, Al Gaither, and Anne Stedman

Noes: Wayne Dellinger

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I, Beunice R. Roberts, City Clerk of the City of Newton, North Carolina, DO HEREBY CERTIFY that the foregoing is a true copy of so much of the proceedings of the City Council of said City, at a regular meeting held on May 2, 2006, as it relates in any way to the holding of a public hearing upon an installment financing agreement and the passage of the foregoing resolutions regarding entering into an installment financing agreement to finance the purpose of providing funds, together with any other available funds, to pay the costs of repairing and upgrading the City swimming pool; engineering, design and construction of Eastmont Culvert, Smyre Farm Road water and sewer lines, Jacob Fork Park, and Electric System Improvement; and engineering, design and acquisition and installation of three (3) Standby/Peaking Generators (the “Project”); and that said proceedings are recorded in the minutes of said City Council.

I DO HEREBY FURTHER CERTIFY that a schedule of the regular meetings of said City Council, stating that the regular meetings of said City Council are held on the first Tuesday and third Wednesday of

each month at 7:00 p.m. in the City Council Chambers at the City Hall in Newton, North Carolina, has been on file with me for at least seven calendar days prior to said meeting, all in accordance with Section 143-318.12 of the General Statutes of North Carolina.

WITNESS my hand and official seal of said City this 2nd day of May, 2006.

Beunice R. Roberts, City Clerk

City Manager Burchins reported that on March 13, 2006, bids were solicited for the funding of the said projects. Six financial institutions were solicited, five responded with quotations and one declined to quote.

City Manager Burchins reported that only three of the respondents met the bid specifications and they were as follows:

<u>Financial Institutions</u>	<u>Quoted interest rates</u>
BB&T Craigie Governmental Finance	3.91%
RBC Centura	4.03%
Sun Trust Bank	4.48%

City Manager Burchins reported that the staff recommended that the City Council award BB&T Graigie Governmental Finance the bid to provide the requested funding and adopt the following resolution with a motion by Council Member Rowe, seconded by Council Member Dixon, and unanimously approved.

RESOLUTION # 11-2006

Resolution Approving Financing Terms

WHEREAS: The City of Newton, North Carolina (the "City") has previously determined to undertake a project for installment financing of swimming pool repairs and upgrades, Park, water and sewer extension, electrical system improvements and various equipment, and the Finance Director has now presented a proposal for the financing of such Project.

BE IT THEREFORE RESOLVED, as follows:

1. The City hereby determines to finance the Project through Branch Banking and Trust Company ("BB&T"), in accordance with the proposal dated March 21, 2006. The amount financed shall not exceed \$4,000,000, the annual interest rate (in the absence of default or change in tax status) shall not exceed 3.91%, and the financing term shall not exceed fifteen (15) years from closing.

2. All financing contracts and all related documents for the closing of the financing (the "Financing Documents") shall be consistent with the foregoing terms. All officers and employees of the City are hereby authorized and directed to execute and deliver any Financing Documents, and to take all such further action as they may consider necessary or desirable, to carry out the financing of the Project as contemplated by the proposal and this resolution. The Financing Documents shall include a Financing Agreement and Deed of Trust and a Project Fund Agreement as BB&T may request.

3. The Finance Director is hereby authorized and directed to hold executed copies of the Financing Documents until the conditions for the delivery of the Financing Documents have been completed to such officer's satisfaction. The Finance Director is authorized to approve changes to any Financing Documents previously signed by City officers or employees, provided that such changes shall not substantially alter the intent of such documents or certificates from the intent expressed in the forms executed by such officers. The Financing Documents shall be in such final forms as the Finance Director shall approve, with the Finance Director's release of any Financing Document for delivery constituting conclusive evidence of such officer's final approval of the Document's final form.

4. The City shall not take or omit to take any action the taking or omission of which shall cause its interest payments on this financing to be includable in the gross income for federal income tax purposes of the registered owners of the interest payment obligations. The City hereby designates its obligations to make principal and interest payments under the Financing Documents as "qualified tax-exempt obligations" for the purpose of Internal Revenue Code Section 265(b)(3).

5. All prior actions of City officers in furtherance of the purposes of this resolution are hereby ratified, approved and confirmed. All other resolutions (or parts thereof) in conflict with this resolution are hereby repealed, to the extent of the conflict. This resolution shall take effect immediately.

Approved this 2nd day of May, 2006.

Beunice R. Roberts, City Clerk

Robert A. Mullinax, Mayor

Item 7: **New Business:**

A. **Presentation of the Capital Improvements Plan for Fiscal Year 2007-2011**

City Manager Burchins reminded the Council that the Capital Improvements Plan for Fiscal Year 2007-2011 was first presented during the annual planning retreat in February. He stated that the plan highlighted the historical and current financial issues and proposed projects to be considered.

City Manager Burchins stated that the City staff spend many hours planning for city facilities, water, sewer and electric projects, recreation needs, and pieces of these plans are part of the five-year program.

City Manager Burchins solicited the expertise and advice of representatives from Davenport and Company LLC who gave a General Fund and Enterprise Systems Capital Funding Analysis for the City of Newton. He stated that the representatives from Davenport and Company have helped to develop the CIP by helping the staff to understand the financing in order to move the projects forward.

Ted Cole, a representative from Davenport and Company, reported that, in the past, cities could borrow funds for services from the State, but that privilege is no longer in existence. He stated that cities are faced with researching other sources for funding, which is a major challenge for some cities.

Mr. Cole stated that his presentation was based on assumptions to help move the proposed projects along and that it was for review purposes only.

Mayor Mullinax stated that this presentation was a continuation from the February planning work session.

Mr. Cole stated that this was a "CIP with no CIP," just numbers to update a series of goals and objectives, affordability of needs, and a strategic plan for the future. The objectives for the City were:

- Work towards establishing a Comprehensive Plan of Finance for all identified Capital Improvement Projects.
- Present a detailed analysis of the City's existing debt profile;
- Develop a series of key financial ratios so as to better understand the City's existing Debt Profile and future Debt Capacity;
- Measure the impact of funding the requested Capital Improvement Program in terms of a number of key financial ratios;
- Maintain and enhance the financial integrity of the water, sewer, and electric enterprise funds;
- Develop a multi-year plan of finance which minimizes rate increases;
- Develop formal policies as it relates to debt service coverage and fund balance reserves in anticipation of credit rating agencies; and
- Leave the combined system in a stronger financial position by 2010.

Mr. Cole stated that in processing these points, the City should first identify the needs, prioritize the needs, consider how affordable are the needs, will they be self-supporting, and what are the best long and short terms of financing the projects.

There was a brief discussion concerning the tax rate, real estate taxes, the economy changes, and the length of time recommended for the CIP.

Mr. Bob High, representative from Davenport and Company, stated that the economy has changed from manufactures in the area which has created a loss in water and sewer customers. He stated that new users are not bringing in the same services and the revenue that City was accustomed to receiving. He stated that the general economy was not good.

City Manager Burchins stated that the local option sales tax money is good for the short term, but the City is helping itself by selling water to Energy United and Troutman customers in which the revenues will be enhanced.

Council Member Gaither stated that he has some concerns with Council looking into planning this far in the future. He stated that the overview was good, but could be prepared in smaller increments of time, ten years is too far ahead.

Council Member Dixon stated that since our financial status is so good, that it scared him to know that the City could do all that was proposed.

Mayor Mullinax stated that the CIP is a five year plan with a 10-year projection and just information for thought. He stated that no Council Member should make judgment until a CIP is approved, that the information was to show the staff's proposed recommendations.

Mayor Mullinax stated that the information was just that, information, and what is on paper and what is in the bank are two different issues. He stated that tonight's information was just for guidance purposes and to receive input from the Council.

Mayor Mullinax thanked Mr. Cole and Mr. High for their attendance and for the information which will be a start in helping the staff prepare the CIP for fiscal year 2007-2011.

Item 8 **City Manager's Report:**

- A. Approval of proposed schedule for Work Sessions to review the 2006-2007 Budget and Capital Improvements Plan for Fiscal Year 2007-2011.

City Manager Burchins presented the proposed schedule for work sessions to review the 2006-2007

Budget and Capital Improvements Plan for Fiscal Year 2007-2011.

It was consensus of the Council to approve the proposed schedule for the work sessions to review the Fiscal Year 2006-2007 Budget and the Capital Improvement Plan for Fiscal Years 2007-2011.

City Manager Burchins reported that the Festival and Events Committee will sponsor a citywide yard sale on Saturday, May 13, 2006 throughout the communities. The Committee has requested that the merchants in the downtown area sell merchandise on the sidewalk. He stated that Mr. Pattishall, was presented with the request and he and his department have no problem with the request.

It was the general consensus of the Council that the merchants could sell merchandise on the sidewalks on Saturday, May 13th.

Item 9. **Questions from Mayor and Council:**

Mayor Pro Tem Johnson reported that a special meeting of the UAQOC will be held on May 9, 2006 to discuss whether the UAQOC should maintain the PM 2.5 monitor at the Rescue Squad location in Hickory or allow NCDAQ to shut down and remove the monitor around June 20, 2006.

Mayor Pro Tem Johnson stated that he needed guidance from the Council as to how to proceed with this issue. He stated that this area is considered a "hot spot" and asked what can be done to change that.

Mayor Mullinax stated that the Council will discuss this issue further at the next meeting.

Item 10. **Closed Session as allowed under G.S. 143-318.11(a) (3)**

A motion was made by Council Member Gaither, seconded by Council Member Dellinger, and unanimously adopted to go into Closed Session to discuss economic development and to consult with the City Attorney.

After the Closed Session, Mayor Mullinax called the Council meeting back into session and stated no action was to be taken on the matters discussed.

Item 11. **Adjourn**

There being no further business to discuss, a motion was made by Mayor Pro Tem Johnson, seconded by Council Member Dixon, and unanimously approved that the meeting be adjourned.

Respectfully submitted,

Robert A. Mullinax, Mayor

Beunice R. Roberts, City Clerk